Supreme Court, U.S.
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No. 98-981

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ATLAS COPCO AB, ATLAS COPCO ROBBINS, INC., ATLAS COPCO COMPRESSORS, INC. and ATLAS COPCO COMPTEC, INC.,

Petitioners,

vs.

ALPINE VIEW COMPANY, LTD. and BJORN HANSEN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

Petitioners are Atlas Copco A.B., Atlas Copco Robbins, Inc., Atlas Copco Compressors, Inc., and Atlas Copco Comptec, Inc. Petitioners were the defendants in the underlying action originally filed in Texas state court and removed to the United States District Court for the Southern District of Texas, Houston Division, and were the Appellees in the Fifth Circuit Court of Appeals. Petitioners will be referred herein collectively as the "Atlas Copco Petitioners."

Respondents are Alpine View Company, Ltd., and Bjorn Hansen. Respondents were plaintiffs in the underlying litigation and were the Appellants in the Fifth Circuit. Respondent, Alpine View Company, Ltd., has no parent company and no nonwholly owned subsidiaries. Respondents will be referred to herein as "Respondents."

SUMMARY OF POSITION

This case arose from the federal district court's dismissal of Respondents' lawsuit based, in part, on a finding of a lack of personal jurisdiction over petitioner, Atlas Copco A.B. The district court's orders of dismissal were appealed. Thereafter, the Fifth Circuit correctly vacated the district court's orders of dismissal and remanded the case to the federal district court with an instruction that it determine the threshold issue of whether it had subject matter jurisdiction of the cause of action prior to any determination of personal jurisdiction, as suggested by *Marathon Oil v. Ruhrgas AG*, 145 F.3d 211 (5th Cir. 1998), *cert. granted*, 119 S. Ct. 589 (U.S. Dec. 7, 1998) (No. 98-470). The Atlas Copco Petitioners are now petitioning this Court to review that decision. However, the Atlas Copco Petitioners are presenting the identical issue to this Court as is currently being presented in *Ruhrgas AG v. Marathon Oil Co., et al.*, Cause No.98-470.

On December 7, 1998, this Court granted the petition for writ of certiorari filed by Ruhrgas. Because Petitioners have presented the identical question for review, Respondents file this memorandum in lieu of a full brief on the merits in opposition. *See* Robert L. Stern, et al., SUPREME COURT PRACTICE 375 (7th ed. 1993). By their memorandum, Respondents request that the Atlas Copco Petitioners' petition for writ of certiorari not be granted, but that it be held in abeyance pending this Court's decision in the *Ruhrgas* case.

PETITIONERS REQUEST FOR CERTIORARI *MIRRORS RUHRGAS v. MARATHON*

The Atlas Copco Petitioners filed their petition for writ of certiorari requesting this Court to review the decision issued in *Alpine View Company, Ltd. v. Atlas Copco Co.*, Case No. 97-

20879 by the United States Court of Appeals for the Fifth Circuit dated August 20, 1998. The Fifth Circuit based its August 20, 1998, *per curiam* opinion on *Marathon Oil Co. v. Ruhrgas AG*, 145 F.3d 211 (5th Cir. 1998). The Fifth Circuit stated that:

> *During the pendency of this appeal, our Court sitting en banc decided Marathon Oil Co. v. A.G. Ruhrgas No. 96-20361, 1998 WL 329842 (5th Cir. June 22, 1998) (en banc) The procedural circumstances involved in this appeal are very similar to those in Marathon Oil and our decision herein is controlled by that en banc decision.*

In *Marathon Oil Co. v. Ruhrgas AG*, the Fifth Circuit, sitting *en banc*, held that in a removed case, a federal district court never has discretion to dismiss for lack of personal jurisdiction before deciding whether it has subject-matter jurisdiction. *Marathon Oil Co. v. Ruhrgas AG*, 145 F.3d at 217-225. In Respondents' case, the Fifth Circuit reached the identical conclusion, ordering

> "*that this case be remanded to the district court for a determination as to whether the federal district court has subject matter jurisdiction of the cause of action as removed from the state court.*"

Thereafter, on September 18, 1998, Ruhrgas filed its petition for writ of certiorari presenting the following question for this Court's review:

> "*Whether a federal district court is absolutely barred in all circumstances from dismissing a removed case for lack of personal jurisdiction without first deciding its subject-matter jurisdiction?*"

On December 7, 1998, this Court granted the petition for writ of certiorari applied for by *Ruhrgas*. Thereafter, on December 16, 1998, the Atlas Copco Petitioners also presented, by way of their own petition for writ of certiorari, the **exact question presented by Ruhrgas**. In fact, the Atlas Copco Petitioners readily admit that their complaint about the Fifth Circuit's decision mirrors that raised in the petition for writ of certiorari filed by Ruhrgas. This is most clearly evidenced by the Atlas Copco Petitioners' petition which reads almost verbatim to the one filed by Ruhrgas wherein the Atlas Copco Petitioners admit that the "procedural circumstances in this case are similar, if not identical, to those in *Marathon*." Moreover, the Atlas Copco Petitioners have failed to raise any argument or issues different from those asserted by Ruhrgas.

Because Respondents believe this Court's decision in *Ruhrgas AG v. Marathon Oil Co., et al.*, will be controlling, there is no reason for this Court to grant certiorari in this case. Therefore, Respondents would respectfully request (i) that the Atlas Copco Petitioners' petition for writ of certiorari be held in abeyance pending a decision in *Ruhrgas AG v. Marathon Oil Co., et al.* Cause No. 98-470; (ii) that Respondents be given the opportunity to supplement this memorandum, if necessary, after the Court rules in *Ruhrgas AG v. Marathon Oil Co., et al.*; or (iii) in the alternative, if the *Ruhrgas* matter is resolved other than by a decision of this Court, that Respondents be allowed the opportunity to respond on the merits and fully brief the issues presented in the Atlas Copco Petitioners' petition for writ of certiorari.

Respectfully submitted,

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